

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff
v.
KYLE BAXTER,
Defendant.

NO. CR14-5296-RJB

GOVERNMENT'S SENTENCING
MEMORANDUM

The United States of America, by and through Annette L. Hayes, Acting United States Attorney for the Western District of Washington, and Rebecca S. Cohen, Assistant United States Attorney for said District, respectfully submits this memorandum regarding the sentencing of Kyle Baxter scheduled for October 16, 2014.

SENTENCING RECOMMENDATION

For the reasons set forth below, the Government recommends a sentence of 24 months of imprisonment followed by 3 years of supervised released, subject to the conditions recommended by Probation. The Court should also impose \$255,033 in restitution to the Internal Revenue Service (IRS).

BACKGROUND

During tax years 2010-2013, defendant Kyle Baxter operated a tax preparation services business under the name “Baxtax.” Plea Agreement ¶ 11. Baxter maintained a website for “Baxtax,” and promoted his services through advertisement in local media, although IRS records do not indicate that he ever obtained a Preparer Tax Identification Number, which is ordinarily required of any person or entity that prepares tax returns for a fee. *Id.*

Operating as “Baxtax” during this time period, Baxter prepared and electronically filed fraudulent federal tax returns on behalf of his clients. *Id.* With each submission, he knowingly included false information, such as inflated withholding figures or inapplicable tax credits, so as to alter the tax liability calculation in his clients’ favor. *Id.* This resulted in some clients already entitled to refunds receiving larger refunds, as well as other clients who owed taxes receiving refunds instead. *Id.* Baxter diverted the extra refunds by submitting paperwork to the IRS, purportedly on behalf of the taxpayers, directing that some or all of the excess refunds be deposited into his bank accounts. *Id.* Baxter did not inform his clients about the inclusion of false information in the tax returns filed on their behalf. *Id.* He provided doctored copies of tax returns to his clients that reflected only the portion of the refunds they received, and omitted reference to the money he had diverted to himself. *Id.*

During the above-referenced period, Baxter filed at least 280 fraudulent returns in the manner described above, resulting in total refund payments of at least \$973,008 to his clients. *Id.* Of that total, Baxter diverted at least \$255,033 to himself. *Id.*

THE CURRENT CHARGES AND PLEA AGREEMENT

On July 3, 2013, an information was filed charging Baxter with making false, fictitious, or fraudulent claims to the Internal Revenue Service in violation of 18 U.S.C. § 287. Dkt. No. 1. Baxter’s initial appearance was held on July 11, 2014, at which he pleaded guilty to the charge in the information and waived indictment. Dkt. No. 7. In exchange for his guilty plea, the Government agreed to recommend a sentence of no

more than the low end of the Sentencing Guideline range. Dkt. No. 6. The plea agreement contains a waiver of appeal. *Id.*

SENTENCING GUIDELINES

The parties agree with the following offense-level calculation:

Base Offense Level (2T1.4(a)(1) and 2T.4.1(G))	18
Tax Preparation Business (2T1.4(b)(1)(B))	+2
Acceptance of Responsibility	-3
Total:	17

The Government agrees with Probation that with one criminal history point, Baxter falls into Criminal History Category I. With an offense level of 17 and a Criminal History Category of I, Baxter's advisory Guidelines range is 24-30 months.¹

18 U.S.C. § 3553 ANALYSIS

A total sentence of 24 months of imprisonment followed by 3 years of supervision is sufficient, but not greater than necessary, to achieve the objectives outlined in Title 18, United States Code, Section 3553(a).

First, the recommended prison term is warranted given the seriousness of the offense and the need to provide just punishment. The Government identified over 180 individuals whose lives were, and continue to be, negatively impacted by Baxter's filing of fraudulent tax returns on their behalf. Many of these individuals have provided Victim Impact Statements for the Court's consideration, explaining how they were victimized by Baxter and how they have been forced to deal with the financial consequences of Baxter's actions. The financial gain to Baxter – even without the additional loss to the

¹ The discrepancy between the parties' calculation and Probation's calculation is due to the fact that Probation used U.S.S.G. § 2B1.1, while the parties used U.S.S.G. § 2T1.4. Although the Statutory Index in the Guidelines Manual points to § 2B1.1 for convictions under 18 U.S.C. § 287, § 2B1.1(c)(3) directs that if "the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two, (Offense Conduct), apply that other guideline." The Ninth Circuit has held that it is permissible for a court to apply the tax guidelines, rather than the general fraud guidelines, when the defendant has been convicted under 18 U.S.C. § 287 for filing fraudulent tax returns. *United States v. Aragbaye*, 234 F.3d 1101 (9th Cir. 2000), *overturned by statute on other grounds*; see also *United States v. Brisson*, 448 F.3d 989, 991-92 (7th Cir. 2006) ("Brisson's offense conduct was at the heart a scheme to file fraudulent tax returns and thus should be considered on par with tax fraud.").

1 IRS that was improperly received by his clients without their knowledge – is over
2 \$250,000. The serious nature of the offense warrants a prison term on par with Baxter's
3 actions, and the Government respectfully submits that the recommended term here would
4 provide appropriate and just punishment.

5 Second, the government's recommendation takes into account the mitigating
6 factors working in Baxter's favor; specifically, Baxter's relatively minor criminal history,
7 the fact that he has been cooperative throughout the investigation, and his willingness to
8 accept responsibility for his actions at an early stage in the proceedings.

9 Finally, the recommended term of supervision is warranted to ensure that Baxter
10 does not continue his fraudulent tax preparation business upon his release from
11 imprisonment.

12 **WAIVER OF APPEAL**

13 As previously noted and detailed in Paragraph 15 of the Plea Agreement, should
14 Baxter receive a sentence within or below the Guidelines range as calculated by the
15 Court, he waives his appeal rights to the maximum extent permitted by law. Should the
16 Court impose such a sentence, the government requests that Baxter be advised of this
17 waiver.
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CONCLUSION

For the foregoing reasons, the Government requests the Court to sentence Baxter to 24 months of imprisonment.

DATED this 9th day of October, 2014.

Respectfully submitted,

ANNETTE L. HAYES

Acting United States Attorney

/s/ Rebecca S. Cohen

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

/s/ Rebecca S. Cohen
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